Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

KARL L. DAHLSTROM,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

KARL L. DAHLSTROM
Reg. No. 12894-054
P. O. Box 1500 – Unit F
El Reno, Oklahoma 73036

Petitioner Pro Se

QP

QUESTIONS PRESENTED FOR REVIEW

1) Are the Petitioner's Motions to Dismiss under F.R.Crim.P. 12(b)(2) authorized with a jurisdictional basis within one (1) year after direct appeal.

2) Is the Petitioner's Grand Jury Indictment sufficient when the legal and fact elements of unlawful, materiality and others are totally missing.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Karl L. Dahlstrom petitions for a Writ of Certiorari to review the judgments of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The decisions of the Court of Appeals for the Fifth Circuit are reproduced in the attached Appendix "A" and "B".

JURISDICTION OF THIS COURT

The judgments of the Court of Appeals were filed on November 23, 2001 and January 3, 2002. This Court has jurisdiction to review that judgment pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS

This case involves the Fifth and Sixth Amendments of the U.S. Constitution.

STATEMENT OF THE CASE

Petitioner Karl L. Dahlstrom was charged with various crimes relating to the selling of stock in a private corporation to investors and using the funds in the

research, development, manufacture, marketing and testing of a fire fighting gel operating in College Station, Texas. He was convicted of securities fraud, registration and broker-dealer violation and mail fraud under 15 U.S.C. §78j(b), 15 U.S.C. §77q(a), 15 U.S.C. §77e(a), 15 U.S.C §78o(a)(1) and 18 U.S.C. §1341.

Petitioner filed a §2255 Motion and F.R.Crim.P. 12(b)(2) Motions which were consolidated for the government's response. The District Court denied all the Motions and appellant filed a Notice of Appeal for the 12(b)(2) Motions *only*. Appellant filed his Opening Brief and a three (3) judge panel summarily dismissed his appeal.

Appellant filed a Petition for a Hearing En Banc because of conflict of decisions between the U.S. Supreme Court and other Fifth Circuit decisions with the panel opinion which was denied.

Petitioner's 12(b)(2) Motions allege that his grand jury indictment has essential legal and facts elements missing that cause the Court to lack subject-matter jurisdiction which causes any subsequent judgments to be void. These several essential legal and fact elements are listed and outlined in Appellant's Opening Brief which was filed with the Appellate Court. The Petitioner in this case is not challenging the constitutionality of his conviction or sentence by this action, only that the Court does not have jurisdiction, therefore any and all judgments are void.

REASONS FOR GRANTING THE WRIT

THIS CASE PRESENTS IMPORTANT QUESTIONS AT THE HEART OF WHEN 12(b)(2) MOTIONS ARE APPROPRIATE AND WHAT LEGAL AND FACT ELEMENTS MUST BE INCLUDED IN A GRAND JURY INDICTMENT.

There can be little debate that several of the various Appellate Courts of the United States have ruled in favor of the Petitioner in similar cases, even recent Fifth Circuit cases. The U.S. Supreme Court has agreed with these several Appellate Court decisions. Thus, there is great inconsistency between other Fifth Circuit cases along with other Circuits and the panel in this case concerning these important issues, meaning that a citizen's rights vary greatly depending on where they find themselves as to geographical location and venue.

Firstly, the panel and en banc Court panel erred in ruling that the 12(b)(2) Motions appeared to be unauthorized and without a jurisdictional basis and cited *U.S. v. Early*, 27 F.3d 140, 142 (5th Cir. 1994). *Early*, supra, was under 18 U.S.C. §3742(a) as the basis for relief which does *not* challenge the jurisdiction of the court making it time barred. The *Early*, supra, case is not on point.

Appellant's 12(b)(2) Motions challenge the jurisdiction of the Court by arguing that the grand jury indictment did not charge a federal criminal offense causing the Court to lack subject-matter jurisdiction. A jurisdictional challenge under 12(b)(2) can be made at any time, even after direct appeal proceedings. The U.S. Supreme Court in *Hughes v. Thompson*, 415 U.S. 1301, 94 S.Ct. 829,

39 L.Ed. 2d 93 at 94 (1974) stated that, "under the Federal Rules of Criminal Procedure the question of the sufficiency of the indictment *shall be noticed by the court at any time*. Rule 12(b)(2)."

In *U.S. v. Armstrong*, 951 F.2d 626 at 628 (5th Cir. 1992), Cert. Denied 40 L.Ed. 2d 824, the Court ruled that a jurisdictional claim involving an indictment can be brought up under a §2255 motion. Appellant in this case filed the 12(b)(2) motion within one (1) year of direct appeal denial. In *U.S. v. White*, 258 F.3d 374 (5th Cir. 2001), the Court ruled that a challenge to indictment's failure to charge an offense was not waived by failure to raise the argument in initial appellate brief. Several other Fifth Circuit decisions also establish the principle that because a challenge to an indictment for failure to charge a federal criminal offense is jurisdictional, an objection may be raised *at any time*. *U.S. v. Guzman-Ocampo*, 236 F.3d 233 (5th Cir. 2000); *U.S. v. Cabrera-Teran*, 168 F.3d 141 (5th Cir. 1999); *U.S. v. Fitzgerald*, 89 F.3d 218 (5th Cir. 1996); *U.S. v. Campos-Ascencio*, 822 F.2d 506 (5th Cir. 1987); *U.S. v. Oberski*, 734 F.2d 1034 (5th Cir. 1984), cert. denied, 83 L.Ed. 2d 790. In *Oberski*, supra, the Court specifically stated that "pendency of the proceeding" could be after the direct appeal. Therefore, it would be unfair and unjust to consider appellant's motions as unauthorized and without a jurisdictional basis in lieu of opposite legal precedents in the U.S. Supreme Court and this 5th Circuit.

Secondly, the panel also erred in ruling that appellant's indictment was sufficient because it *alleged all the material elements* of the offenses and *provided Dahlstrom with adequate notice* of the charges being made against

him. The panel cites *U.S. v. Berrios-Centeno*, 250 F.3d 294 at 297 (5th Cir. 2001) as the basis for their reasoning. Again, the *Berrios-Centeno*, supra, case is off point because Title 8 U.S.C. §1326 in that case is a *General Intent Offense*, not a *Specific Intent Offense. All of the statutes in appellant's indictment are Specific Intent Offenses* and should be appraised with a different standard and context. Public welfare specific intent offenses are created and recognized in limited circumstances. *Berrios-Centeno*, supra at 298. Apparently, the offenses in Appellant's indictment were not public welfare offenses or, if they were, Congress chose to make them "specific intent offenses".

All of offense statutes in appellant's indictment required the essential element of "unlawful" or "unlawfully". If these offense statutes were "general intent", this element is still required. But, the statutes are "specific intent" offenses where congress included the term "unlawful" or "unlawfully" in the statute as an essential element. The case cited by the panel explains the difference between "general intent" and "specific intent" and shows the error in the panel's reasoning. *Berrios-Centeno*, supra at 299. In *Berrios-Centeno* at 299, the court explained "general intent" as a situation where a defendant may not "specifically intend" to act *unlawfully*, but he did "intend" to commit the act. Conversely, in a "specific intent" crime, a defendant must "specifically intend" to act *"unlawfully"*. This essential element of *"acting unlawfully"* is totally missing in all counts in appellant's indictment even though it was required. Therefore, it follows that all of the material elements of the offenses were not present and Dahlstrom did *not* receive adequate notice of the charges against him as to "mens rea".

Also, the panel's decision and understanding of their own cited case seems to be faulted. Again in *Berrios-Centeno*, supra, p. 297, this case cites *Morrisette v. United States*, 342 U.S. 246, 72 S.Ct. 240, 96 L.Ed. 288 (1952) which established the essential "mens rea" elements of a "specific intent offense" crime to be knowingly, willfully and "*unlawfully*". (emphasis added). The court in *Berrios-Centeno*, at 287, stated, "By any standards, the "mens rea" element is "material" or "essential". Yet the panel erroneously asserts that the indictment of the appellant is sufficient and all the material elements are present. Even if the "specific intent" statutes were silent in appellant's case (and they are not!), those necessary elements are still required. *Berrios-Centeno*, supra, p. 297, note 3.

Another example of a missing essential fact element occurs in Securities Counts 2 through 5 in appellants indictment. The names of any alleged victims or persons involved in stock transactions are totally missing in Counts 2 through 5. It is an elementary principle of criminal pleading that the indictment must state the species – it must descend to the particular. *Russell v. United States*, 369 U.S. 749, 82 S.Ct. 1038, 8 L.Ed. 2d 240 (1962) at 251; *U.S. v. Diecidue*, 603 F.2d 535 (5th Cir. 1978); *U.S. v. Williams*, 679 F.2d 504 at 509 (5th Cir. 1982). The phrase "shareholders" in appellant's indictment does not descend to the particulars. Apparently, the panel used the specific names in the mail fraud counts to incorporate them in the Securities Counts. This is not allowed because each count in an indictment must be regarded as if it were a separate indictment. *Dunn v. U.S.*, 284 U.S. 390, 52 S.Ct. 189, 76 L.Ed. 356 (1932). Each count is separate without reference to other counts unless the allegations of

those counts are expressly incorporated. *Goldenberg v. U.S.*, 75 L. Ed. 2d 479 (1983). In appellant's indictment, the mail fraud counts were not incorporated into the securities counts 1 thru 5. Thus, the specific names cannot be used as essential fact elements in counts 1 thru 5.

Several other examples of missing essential legal and fact elements are missing from appellant's indictment, e.g. materiality in Counts 2, 3 and mail fraud counts. (See Appellant's Opening Brief.) This shows that the indictment was not sufficient in all the material elements in this case.

The panel decided that Dahlstrom was provided with adequate notice of the charges being made against him. If Dahlstrom had missing essential legal and facts elements in the indictment, it follows that neither the grand jury nor Dahlstrom could have had adequate notice. Also, actual notice prior to trial does not cure the insufficiency of the indictment which failed to contain any part of one element of offense. *U.S. v. Hooker*, 841 F.2d 1225 (4th Cir.); *U.S. v. Spinner*, 180 F.3d 514 (3rd Cir. 1999). Also, *Berrios-Centeno*, supra, at 297 states that, "the grand jury must be notified (informed) of the basis for the charge" under the Fifth Amendment. This is true even if the defendant is informed. In addition, a valid indictment must:

1.) confirm the elements of the offense charged,

2.) fairly inform a defendant of the charge, *and*

3.) every essential element of an offense must be charged in the body of the indictment, even a reference to the statute will not cure the failure. *U.S. v. Vinyard*, 266 F.3d 320 (4th

Cir. 2000) A finding that a defendant is fairly informed of the charge will not make the indictment valid because that is only one leg of a three (3) legged stool.

CONCLUSION

It is obvious that the panel decision conflicts with several U.S. Supreme Court, 5th Circuit and other Circuit Court decisions. This conflict must be corrected by the U.S. Supreme Court. The *Early*, supra case, and *Berrios-Centeno*, supra cases are not legally authorized to be used as an argument for dismissal under any logical construction in this case, as applied by the panel and en banc hearing panel.

THEREFORE, IT IS prayed that all Counts be dismissed with prejudice for failure of indictment to charge any criminal offenses, or in the alternative, this Court remand the case back to 5th Circuit with instructions to review fully the appeal by a different panel.

Respectfully submitted,

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APPENDIX "A"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20571
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KARL L. DAHLSTROM,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-00-CV-3108
H-96-CR-157-1

(Filed Nov. 23, 2001)

Before DeMOSS, PARKER, and DENNIS, Circuit Judges.

PER CURIAM:*

Karl L. Dahlstrom, federal prisoner # 12894-054, appeals the district court's dismissal of his motions invoking Fed. R. Crim. P. 12(b)(2), which were filed after

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

his conviction was affirmed on appeal and after the denial of certiorari. Because the criminal proceedings were no longer pending, these motions appear unauthorized and without a jurisdictional basis. *See United States v. Early*, 27 F.3d 140, 142 (5th Cir. 1994).

Even assuming that these motions were validly filed, a review of the indictment reflects that it was sufficient because it alleged all the material elements of the offenses and provided Dahlstrom with adequate notice of the charges being made against him. *See United States v. Berrior-Centeno*, 250 F.3d 294, 297 (5th Cir.), *cert. denied*, 70 U.S.L.W. (U.S. Oct. 1, 2001) (No. 01-5535), 2001 WL 914944.

Accordingly, the appeal is DISMISSED as frivolous. *See* 5th Cir. R. 42.2. All outstanding motions are DENIED as MOOT.

APPEAL DISMISSED. ALL OUTSTANDING MOTIONS DENIED AS MOOT.

APPENDIX "B"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20571

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KARL L DAHLSTROM,

Defendant - Appellant.

Appeal from the United States District Court
for the Southern District of Texas

ON PETITION FOR REHEARING EN BANC

(Opinion 11/23/01, 5 Cir., ___, ___ F.3d ___)

(Filed Jan. 3, 2002)

Before DeMOSS, PARKER, and DENNIS, Circuit Judges.

PER CURIAM:

(X) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ James L. Dennis
United States Circuit Judge

Supreme Court, U.S.
FILED
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No. 02-60

In The
Supreme Court of the United States

KARL L. DAHLSTROM,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITIONER'S SUPPLEMENTAL APPENDIX

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8 pg

Exhibit "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KARL L. DAHLSTROM, Petitioner, v. UNITED STATES of AMERICA, Respondent.	§ § § § § §	CIVIL ACTION NO. H-00-3108 (Criminal No. H-96-157-01)

MEMORANDUM AND ORDER

(Entered May 15, 2001)

Pending before the court is petitioner, Karl L. Dahlstrom's, Petition Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (Docket Entry No. 1, cross-filed under Cr. No. H-96-157 at Docket Entry No. 308). Also pending under Cr. No. H-96-157 is Dahlstrom's Third Supplemental Emergency Motion to Dismiss under Federal Rule of Criminal Procedure 12(b)(2) (Docket Entry No. 307). These motions lack merit and will be denied.

On August 27, 1997, a jury convicted Dahlstrom of: (1) fraud in connection with the purchase and sale of securities (counts 2 and 3), (2) sale of unregistered securities (count 4), (3) acting as an unregistered broker-dealer (count 5), and (4) mail fraud (counts 6, 9-14, and 16).

Dahlstrom appealed his conviction. The Fifth Circuit affirmed his conviction and sentence in a published opinion. *See United States v. Karl Dahlstrom,* 180 F.3d 677 (5th Cir. 1999). The United States Supreme Court denied

Dahlstrom's petition for writ of certiorari on March 27, 2000. *See Dahlstrom v. United States,* 120 S.Ct. 1530 (March 27, 2000).

Dahlstrom filed his petition under 28 U.S.C. § 2255 in this court on September 4, 2000. *See* Petition under 28 U.S.C. to Vacate, Set Aside, or Correct Sentence (Docket Entry No. 1). As grounds for relief, Dahlstrom alleges that:

(1) the prosecutor and court actually and constructively amended the defective indictment concerning essential elements of the offense to charge different offenses at trial;

(2) his sentence violated *Apprendi* because elements that were not charged in the indictment or presented to the jury were used to enhance his sentence; and

(3) the court erred in allowing a "deliberate ignorance" instruction to the jury because "it instructed the jurors of incorrect principles of law applicable to the factual issues confronting them." Dahlstrom also alleges that the "deliberate ignorance" instruction that was given had improper wording.

See Petition at p. 5. The court will address each ground in turn.

A. Dahlstrom's Defective Indictment Allegation

Dahlstrom alleges that the indictment was defective as to counts 2 through 5 because those counts: (a) omitted essential elements of the offense, (b) did not charge criminal offenses but were based on civil statutes, and (c) omitted a *mens rea* allegations. *See* Petition at p. 5 (Docket Entry No. 1). Dahlstrom alleges that because the mail

fraud allegations in counts 6, 9-14, and 16 were predicated on counts 2-5 they are also defective because no criminal fraud is alleged on which to base the mail fraud charges. *See id.* This claim presents no basis for relief for a number of reasons.

First, Dahlstrom has procedurally defaulted these claims by failing to raise them on direct appeal. All claims raised on a collateral attack must first be exhausted through the appeals process. *See Bousley v. United States,* 118 S.Ct. 1604, 1611 (1998) (citations omitted). In order to overcome his default, Dahlstrom must prove either cause and actual prejudice or that he is actually innocent. *See id.* Dahlstrom has made no effort to satisfy either standard required to excuse procedural default. Accordingly, Dahlstrom is not entitled to relief on this claim.

Furthermore, even if this claim had been exhausted these claims are entirely without merit. Counts 2-5 reallege and incorporate the voluminous factual allegations of the indictment set forth with count one. *See* Indictment at pp. 11, 12, 13, 14. These factual allegations lay out in detail that the defendants knowingly and willfully engaged in violations of the Securities Acts and engaged in fraud using the mails. The elements of the substantive crimes underlying the conspiracy count are also accurately recited in count 1 and realleged and incorporated in the ensuing counts. *See* Indictment at pp. 3-4. Moreover, each count tracks the relevant statute and sets out the elements required for each crime. Although Dahlstrom argues that no *mens rea* was alleged, each count contains the required *mens rea* for a *criminal* violation of the Securities Acts. For example, count 2 states that the defendants "knowingly and willfully" engaged in the conduct set forth in that count. *See* Indictment at ¶ 22.

Willful violation of the Securities Acts is a crime. *See* 15 U.S.C. § 77x (West 1997). Contrary to Dahlstrom's argument, there are no exemptions or exceptions to securities fraud. *See United States v. Tallant,* 547 F.2d 1291, 1297 n.15 (5th Cir.), *cert. denied,* 98 S.Ct. 262 (1977). The exceptions and exemptions of the Securities Code to registration of securities or persons are an affirmative defense, not elements of the crime. *See Securities and Exchange Commission v. Continental Tobacco Co.,* 463 F.2d 137, 155-56 (5th Cir. 1972) (citations omitted); *United States v. Anzelmo,* 319 F.Supp. 1100, 1121-22 (E.D. La. 1970) (citations omitted). Accordingly, the exceptions and exemptions argued by Dahlstrom were not necessary to the indictment.

The mail fraud counts were also adequately alleged. As discussed above, Dahlstrom's argument that the securities fraud counts forming the basis of the mail fraud counts were inadequate is meritless. Furthermore, the mail fraud counts are sufficient in themselves. An indictment that tracks the statutory language of 18 U.S.C. § 1341 is sufficient to charge mail fraud. *See Kreuter v. United States,* 218 F.2d 532 (5th Cir.), *cert. denied,* 75 S.Ct. 777 (1955). The elements of mail fraud are (a) a scheme to defraud, and (b) a mailing for the purpose of executing the scheme. *See United States v. Tallant,* 547 F.2d at 1298. These elements are alleged in the indictment. *See* Indictment, p. 17 (Docket Entry No. 1 in Cr. No. H-96-157).

B. Dahlstrom's *Apprendi* Allegations

Dahlstrom alleges that his sentence violated the holding of *Apprendi v. New Jersey,* 120 S.Ct. 2348 (2000),

because elements were used to enhance his sentence that were not presented to the jury and decided beyond a reasonable doubt. As explained above, no elements were added to those in Dahlstrom's indictment because all necessary elements were contained in the indictment. The essence of Dahlstrom's claim, however, is that the wrong amount was used to calculate the loss attributable to his conduct. Whether Dahlstrom's sentence was properly calculated under the Sentencing Guidelines is not a constitutional issue cognizable on § 2255 review. *See, e.g., United States v. Segler,* 37 F.3d 1131, 1133-34 (5th Cir. 1994). The Fifth Circuit has held that *Apprendi* does not apply to facts used to enhance a sentence under the Sentencing Guidelines within the statutory range. *See United States v. Keith,* 230 F.3d 784, 786 (5th Cir.), *cert. denied,* 120 S.Ct. 1999 (2000). Because the statutory maximum sentence for violation of the Securities Act of 1934 under 15 U.S.C. § 78ff(a) is up to ten years' imprisonment, Dahlstrom's sentence of 78 months' imprisonment is well below the statutory maximum. Dahlstrom's sentence of 60 months for violation of the Securities Act of 1933 under 15 U.S.C. § 77x likewise does not exceed the statutory maximum of 5 years' imprisonment. Because the loss attributable to Dahlstrom's conduct that was used to calculate his sentence did not result in a sentence greater than the statutory maximum for each count, Dahlstrom is not entitled to relief on this basis.

C. Dahlstrom's Allegation that an Erroneous Instruction was Given

Dahlstrom alleges that the court committed plain error by instructing the jury on deliberate ignorance. Because Dahlstrom failed to raise this issue on appeal, he

has procedurally defaulted this claim. *See Bousley,* 118 S.Ct. at 1611. Dahlstrom has made no effort to show cause and prejudice, and his default will not be excused. Furthermore, Dahlstrom's claim has no merit. First, the facts of Dahlstrom's case indicate that the instruction was warranted. Section 77x does not require proof that defendant knew his actions were illegal; willfulness can be proven by evidence of deliberate ignorance. *See United States v. Schlei,* 122 F.3d 944, 973 (11th Cir. 1997), *cert. denied,* 118 S.Ct. 1523 (1998). Furthermore, even if giving the instruction were error, erroneously providing an instruction on deliberate ignorance is harmless error where evidence of actual knowledge is presented. *See United States v. Davis,* 226 F.3d 346, 358 (5th Cir. 2000), *cert. denied,* 121 S.Ct. 1161 (2001). Evidence of actual knowledge was repeatedly presented at trial. Accordingly, Dahlstrom is not entitled to relief on this basis.

IV. Conclusions and Order

Dahlstrom has procedurally defaulted his claims challenging the sufficiency of his indictment. Furthermore, the indictment charging Dahlstrom was not constitutionally defective. Because Dahlstrom's sentence did not exceed the statutory maximum, his argument that his sentence was incorrectly calculated based on an erroneous amount of loss attributable to the fraud he perpetrated is constitutionally irrelevant. Dahlstrom has procedurally defaulted his claim that an improper instruction was given at trial. Furthermore, the deliberate ignorance instruction given at his trial was proper and any error in giving the instruction was harmless. Accordingly, Dahlstrom's Petition Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (Docket Entry No. 1) is **DENIED.**

Because the court finds no meritorious basis for modification of Dahlstrom's sentence or any other relief, all other relief requested is **DENIED.**

Dahlstrom's numerous motions under Fed. R. Crim. P. 12(b)(2) (Docket Entry Nos. 301, 304, and 307 in Cr. No. H-96-157) are frivolous and are **DENIED**. Dahlstrom's Motion for Reconsideration of Motion for Modification of Sentence (Docket Entry No. 300 in Cr. No. H-96-157) and First supplemental Motion for Reconsideration (Docket Entry No. 305 in Cr. No. H-96-157) are **DENIED**. Dahlstrom's Motion to Hold Deadline for Responding to Post-Conviction Pleadings in Abeyance (Docket Entry No. 318 in Cr. No. H-96-157) is **DENIED as moot**. Dahlstrom is warned that if he files another frivolous motion of any kind he may be sanctioned.

SIGNED at Houston, Texas, on this the 11th day of May, 2001.

/s/ Sim Lake
SIM LAKE
UNITED STATES
DISTRICT JUDGE